

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIRIUS XM RADIO INC.,
Petitioner,

v.

FRAUNHOFER-GESELLSCHAFT ZUR FÖRDERUNG DER
ANGEWANDTEN FORSCHUNG E.V.,
Patent Owner.

Case IPR2018-00690
Patent No. 6,314,289

**PATENT OWNER'S MOTION TO DISMISS THE PETITION AS TIME-
BARRED UNDER 35 U.S.C. § 315(b)**

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EXHIBIT LIST

Fraunhofer Ex. 2001	Executed Summons to Sirius XM Radio Inc., attaching Complaint for Patent Infringement, Dated February 22, 2017
Fraunhofer Ex. 2002	Fraunhofer Complaint for Patent Infringement against Defendant Sirius XM Radio Inc., Filed February 22, 2017
Fraunhofer Ex. 2003	PTAB E2E Search Result for AIA Review Number: IPR2016-00690, https://ptab.uspto.gov/#/login (search "AIA Review #" for "IPR2016-00690") (retrieved June 6, 2018)
Fraunhofer Ex. 2004	PTAB E2E Search Result for AIA Review Number: IPR2016-00690, https://ptab.uspto.gov/#/login (search "AIA Review #" for "IPR2016-00690") (retrieved April 18, 2018)

I. INTRODUCTION

Patent Owner hereby moves to dismiss the Petition in this case as time-barred under 35 U.S.C. § 315(b). The Board authorized Patent Owner to file this motion in an email dated June 6, 2018.

A petition for *inter partes* review must be filed within one year after Petitioner was served with a complaint alleging infringement. 35 U.S.C. § 315(b); 37 C.F.R. § 42.101(b). In this case, Patent Owner indisputably served Petitioner with a complaint alleging infringement of U.S. Patent No. 6,314,289 (“the ’289 patent”) on **February 22, 2017**. The Patent Trial and Appeal Board’s PTAB E2E system shows that the Petition for *inter partes* review of U.S. Patent No. 6,314,289, assigned Case No. IPR2018-00690, has a filing date of **February 23, 2018**. This is more than one year after Petitioner was served with the complaint. Therefore, the Patent Trial and Appeal Board (“Board”) should dismiss the Petition as time-barred under 35 U.S.C. § 315(b).

II. LEGAL STANDARD

An *inter partes* review “may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” 35 U.S.C. § 315(b). This same time bar is reflected in the USPTO’s trial practice rules. 37 C.F.R. § 42.101(b). A petition is only

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